

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

EDWIN SPENCER,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Civil Action No. CV-04-4357  
(Block, J.) (Mann, M.J.)

**STIPULATION AND ORDER  
OF PARTIAL DISMISSAL**

WHEREAS, Plaintiff Edwin Spencer has asserted tort claims for personal injury and property damage, pursuant to the Federal Tort Claims Act ("FTCA"), 28 U.S.C. § 2671 et seq., against Defendant United States of America;

WHEREAS, Plaintiff's tort claims arise from an automobile accident that occurred between Plaintiff's vehicle and a United States Postal Service truck on August 18, 2003, at the intersection of Saratoga Avenue and Marion Street in Brooklyn, New York;

WHEREAS, under the FTCA, the liability, if any, of the United States for Plaintiff's tort claims is determined in accordance with the substantive law of New York;

WHEREAS, New York's Comprehensive Motor Vehicle Insurance Reparations Act ("No Fault Law"), N.Y. Ins. Law § 5104, provides that a plaintiff may not recover for non-economic damages, including pain and suffering, unless he can prove that he suffered a "serious injury" within the meaning of the statute;

WHEREAS, Plaintiff has not suffered a "serious injury" within the meaning of the No Fault Act, arising from the automobile accident at issue in this lawsuit;

ORIGINAL  
DJF  
clm

ACCORDINGLY, IT IS HEREBY STIPULATED AND AGREED, by and between the parties, that Plaintiff's claims for relief for personal injuries arising from the automobile accident at issue in this lawsuit are hereby **dismissed with prejudice**, without costs to any party;

IT IS FURTHER STIPULATED AND AGREED, by and between the parties, that this Stipulation is **without prejudice** to Plaintiff's claims for relief for property damage arising from the automobile accident at issue in this lawsuit.

**AGREED TO BY THE PARTIES:**

THOMAS D. WILSON, Esq.  
16 Court Street – Suite 1908  
Brooklyn, New York 11241  
(718) 875-0021

*Attorney for Plaintiff*

By: 

THOMAS D. WILSON (Tw 6908)

Dated: August \_\_, 2005

By: 

EDWIN SPENCER, Plaintiff

Dated: August 26, 2005

ROSLYNN R. MAUSKOPF  
United States Attorney  
Eastern District of New York  
One Pierrepont Plaza – 14th Floor  
Brooklyn, New York 11201  
(718) 254-7000

*Attorney for United States of America*

By: 

STEVEN M. WARSHAWSKY (SW 5431)  
Assistant United States Attorney  
(718) 254-6060

*September 2*  
Dated: ~~August~~ \_\_, 2005

SO ORDERED

 9/6/05